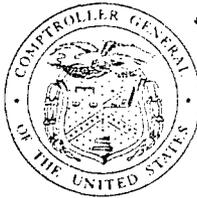


DECISION



13491
PLM-1
Mr. Pool
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-197908 *Request for Reimbursement of* DATE: April 21, 1980

MATTER OF: Doss H. White, Jr. - Real Estate Broker's Commission

- DIGEST:
- (1) Transferred employee seeks reimbursement of 10 percent real estate broker's commission paid in connection with "guaranteed sale" of residence at his former duty station. Statutory provisions of 5 U.S.C. § 5724a(a)(4)(1976) and implementing regulations require that applicable commission rate is rate generally and customarily charged in locality, and information provided by HUD creates rebuttable presumption regarding prevailing commission rate. Where local HUD office states that 7 percent was prevailing commission rate, and such finding is uncontested by claimant, there is no authority to reimburse employee for extra 3 percent commission paid to expedite sale of property.
 - (2) Although employee claims excess charges were paid for "guaranteed sale" provision resulting from erroneous advice of agency officials, employees are on constructive notice that reimbursement of broker's fees may not exceed the prevailing rate which may be determined on the basis of information supplied by HUD; and in any event, Government is neither bound nor estopped by erroneous advice of its agents. See cases cited.

Torin D. Anderson, an authorized certifying officer for the Bureau of Mines, Department of the Interior, has requested an advance decision of this Office concerning a reclaim for real estate expenses in the case of Mr. Doss H. White, Jr.

Mr. White, an employee of the Bureau of Mines, was officially transferred from Denver, Colorado, to Atlanta, Georgia, in July 1977. Incident to the transfer, Mr. White sold his residence in Denver, Colorado. He paid his broker a 10 percent commission of \$5,000, but was reimbursed only 7 percent or \$3,605, by the Bureau of Mines. He has claimed reimbursement for \$1,395, representing the additional 3 percent commission.

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The Bureau of Mines reduction of Mr. White's original claim by \$1,395 and refusal to reimburse in excess of 7 percent was based on its informal inquiry to the Department of Housing and Urban Development (HUD) regarding the customary and normal real estate commission charged by brokers in the Denver, Colorado, area. The Denver office of HUD informed the Bureau of Mines that 7 percent was the normal and customary commission. However, Mr. White contends that due to the unfavorable market conditions in the immediate area of his home in Denver, the guaranteed sale provision underlying the increased broker's commission was extremely attractive. Mr. White further contends that prior to agreeing to the 10 percent commission figure he contacted the personnel office in Washington, D.C., and, after explaining his situation, was advised that the Government would pay up to 10 percent commission or \$5,000. In no event, Mr. White states, was he advised of a 7 percent commission ceiling in the Denver, Colorado, area.

The statutory authority for reimbursing real estate expenses is found in 5 U.S.C. § 5724a(a)(4)(1976), which provides for reimbursement of expenses of the sale of the residence of the employee at the old station, but limits reimbursement for brokerage fees to the amount customarily charged in the locality. This provision has been implemented by the Federal Travel Regulations (FTR) (FPMR 101-7) para. 2-6.2a (May 1973), which provides in part that:

" * * * A broker's fee or real estate commission paid by the employee for services in selling his residence is reimbursable but not in excess of rates generally charged for such services by the broker or by brokers in the locality of the old official station. No such fee or commission is reimbursable in connection with the purchase of a home at the new official station."
(Emphasis added.)

In considering claims such as Mr. White's, we have consistently held that the regulations require that the applicable commission rate is the rate generally charged by all of the real estate brokers in the area, not the rate charged by the particular broker used by the employee to sell his residence. Robert W. Freundt, B-181129, August 19, 1974. We have further concluded that, in accordance with FTR para. 2-6.3c, where HUD is consulted to determine what charges are customary in the locality, the information provided by HUD

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creates a rebuttable presumption as to the prevailing commission rate. Without other evidence as to the prevailing rate, the presumption created by the HUD determination must stand and is controlling. Donald J. Jolovich, B-190902, February 14, 1978, and cases cited therein.

Mr. White does not specifically rebut this presumption nor challenge these conclusions. Rather, Mr. White contends that, in view of the difficult market conditions which highlight the circumstances of his case, and because he was erroneously advised regarding limitations on brokers' commissions, the 10 percent commission charge should be allowed.

We do not agree. We have held that where a commission rate greater than that usually charged is paid to expedite the sale of the property, there can be no reimbursement for the extra commission. Calvin T. Westmoreland, B-196517, February 19, 1980, and cases cited therein. While it is unfortunate that Mr. White may have been erroneously led to believe that a 10 percent broker's fee would be allowable, we have stated that employees are on constructive notice that reimbursement of broker's fees may not exceed the prevailing rate which may be determined on the basis of information supplied by HUD. Donald J. Jolovich, *supra*. And in any event, it is a well settled rule of law that the Government is neither bound nor estopped by the erroneous advice and authorizations of its officials, agents, or employees, even though committed in the performance of their official duties. William R. Walberg, 58 Comp. Gen. 539 (1979); and Michael W. Matura, B-195471, October 26, 1979.

Accordingly, there is no legal authority under which Mr. White may be reimbursed the additional 3 percent commission charge claimed. The reclaim voucher, therefore, may not be certified for payment.



Acting Comptroller General
of the United States